

## **REMARKS**

Claims 26, 28-35, 40-42, 48, 51, and 53 remain for prosecution in the present application. Reconsideration and allowance of all pending claims are requested in view of the foregoing amendments and the following remarks.

### **Allowable Subject Matter**

Claim 51 was objected to as being dependent upon a rejected base claim, but it was indicated that such claim would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicants have rewritten claim 51 in independent form including all of the limitations of the base claim and intervening claims. Reconsideration and withdrawal of the objection to claim 51 and formal allowance thereof, is respectfully requested.

### **35 USC §112 Rejection**

Claims 26, 28 and 29 have been rejected under 35 USC §112, first paragraph for alleged failure to meet the enablement requirement as to the “at least one internal lug” limitation in claim 26. According to the rejection, Applicant is allegedly attempting to claim a nonenabled embodiment of a package having “only” one internal lug, and at least “a pair” of lugs are “...required for proper function of the novel feature of the invention.” (emphasis added) The rejection is unfounded for the following reasons.

First, claims 26, 28, and 29 do not claim “only” one internal lug as alleged. To the contrary, claims 26, 28, and 29 are not so limited because they cover a package having “at least one” internal lug. Besides, claims 26, 28, and 29 are written to be open-ended and, thus, can encompass a package having more elements than just those claimed. Moreover, claim 28 clearly recites at least one other internal lug in addition to the at least one internal lug.

Second, contrary to the allegation, Applicants' specification as filed clearly discloses that a package 30 may include a first lug 86 on a closure skirt 72 that cooperates with a respective stop lug 56 on a container finish 36 to prevent unthreading of the closure 34 from the finish 36. Those of ordinary skill in the art will recognize that the second lug 88 is not necessary to prevent unthreading of the closure 34 from the finish 36.

Third, contrary to the implication in the rejection, Applicants' may claim and do claim broader than any particular disclosed embodiment because – according to the axiom – an applicant is entitled to claims as broad as the prior art and applicant's disclosure will allow. In other words, the rejection is merely a manifestation of an unduly narrow reading of Applicants' invention of claim 26.

Accordingly, reconsideration and withdrawal of the rejection of claims 26, 28, and 29 under 35 U.S.C. § 112 is respectfully requested.

### **35 USC §103 Claim Rejections**

Independent claim 26 has been rejected under 35 USC §103 as unpatentable over Shah 4,375,858 in view of Akers 5,449,078. Independent claims 30, 40, and 53, and dependent claims 28, 29, 31-34, 41, and 48-50 have been rejected under 35 USC §103 over Shah in view of Akers as applied to claim 26 and further in view of Swartzbaugh 4,399,920. Dependent claims 35 and 42 have been rejected under 35 USC §103 over Shah in view of Akers and in view of Swartzbaugh as applied to claim 30, and further in view of Puresevic 4,523,688. Reconsideration and withdrawal of the rejections is respectfully requested.

A *prima facie* case of obviousness requires a proposed combination of references to teach or suggest all elements of a rejected claim. See *CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985

(CCPA 1974)). In this case, it is clear that there are unreconciled differences between the proposed combination and Applicants' claims and, thus, the Office Action does not set forth a *prima facie* case of obviousness. Also, under MPEP § 2142, if the Examiner's burden to produce a *prima facie* case of obviousness is not satisfied, then an applicant is under no obligation to submit evidence of nonobviousness.

Shah discloses a container body 19 having a neck portion 16 with a continuous thread 20 and a holding lug 15 with a cam surface 14 that cooperates with a rectangular locking tab 11 on a closure 18 applied to the container body 19.

But Shah fails to disclose, *inter alia*, that the locking tab 11 has an axially oriented cam face. Shah also fails to disclose a skirt on the closure 18 having a stepped profile that includes a first portion on which at least one internal thread is disposed and a second portion stepped radially outwardly from the first portion and having an inner diameter larger than that of the first portion on which the locking tab 11 is disposed.

Akers does not cure the aforementioned deficiencies of Shah. Akers discloses a container 10 including a camming latch 21 having a cam receiving notch 22, and a cap 11 including a lock lug 20 which is guided into the notch 22 upon rotation of the cap 11 on the container 10.

But Akers fails to disclose, *inter alia*, a thread on the container 10 or the cap 11, and also fails to disclose a skirt on the cap 11 having a stepped profile that includes a first portion on which at least one internal thread is disposed and a second portion stepped radially outwardly from the first portion and having an inner diameter larger than that of the first portion on which the lock lug 20 is disposed.

In other words, the alleged combination does not disclose a closure skirt having a stepped profile that includes a first portion on which at least one internal thread

is disposed, and a second portion stepped radially outwardly from the first portion and having an inner diameter larger than that of the first portion on which is disposed at least one internal lug with an axially oriented cam face, as recited in Applicants' amended independent claims 26, 30, and 53. Thus lacking significant elements of Applicants' claims 26, 30, and 53, the alleged combination cannot possibly yield or render obvious the subject matter of those claims.

Swartzbaugh does not remedy the deficiencies of Shah and/or Akers. Swartzbaugh identifies a problem with child resistant packages, including difficulties in removing a closure from a container. As a solution, Swartzbaugh teaches a closure that is more readily removable from a container. Specifically, Swartzbaugh discloses a container 20 having projections 25 with cam surfaces 26 and radial and axial surfaces 27, 28 defining shoulders, and a closure 21 including a skirt 31 having radially inwardly extending rectangular locking lugs 26 and cam lugs 37 with cam surfaces 38. During removal of the closure 21 from the container 20, rotation of the closure 21 causes the cam lugs 27 to engage the projections 25 so as to cam the closure 21 axially upwardly for ready removal of the closure 21 from the container 20.

But Swartzbaugh does not disclose, *inter alia*, a thread on the container 20 or the closure 21, and Swartzbaugh fails to disclose a skirt on the closure 21 having a stepped profile that includes a first portion on which at least one internal thread is disposed and a second portion stepped radially outwardly from the first portion and having an inner diameter larger than that of the first portion on which the locking lugs 26 are disposed. Swartzbaugh also fails to disclose that the locking lugs 26 have axially oriented cam faces that slope toward a base wall of a closure such that threading the closure onto a container finish causes at least one internal lug on a closure skirt to cam axially away from a

container open end relative to the at least one external lug on the container finish by compression of at least one spring element. Rather, in Swartzbaugh, the lugs on the container skirt are provided to facilitate removal of a closure from a container, and not to thread the closure onto the container. Accordingly, Swartzbaugh teaches away from Applicants' claims.

As stated in the MPEP, if any of the cited references teach away from the suggested combination in any material respect or if any of the cited references teach away from an applicant's claims, then the claimed invention is distinguishable over the combination of cited references and the *prima facie* case of obviousness is rebutted. See MPEP § 2141.02(VI) Because Swartzbaugh teaches away from Applicants' claims as set forth above, the *prima facie* case - to the extent it has been made out - is rebutted.

Finally, Puresevic does not cure the deficiencies of Shah, Akers, and/or Swartzbaugh. Puresevic is cited for its teachings regarding a biasing ring 10 of a closure device 1. But, like the other applied references, Puresevic fails to disclose a skirt on a closure having a stepped profile that includes a first portion and a second portion stepped radially outwardly from the first portion and having an inner diameter larger than that of the first portion on which at least one internal lug is disposed, as recited in Applicants' amended independent claims 26, 30, and 53. Puresevic also fails to disclose at least one internal lug having an axially oriented cam face that slopes toward a base wall of a closure such that threading the closure onto a container finish causes the at least one internal lug to cam axially away from a container open end relative to at least one external lug on the container finish by compression of at least one spring element, as recited in Applicants' amended independent claims.

For at least these reasons, amended independent claims 26, 30, 40, and 53 define patentable subject matter over all cited references. Claims 28 and 29 are dependent upon claim 26, claims 31-35 depend from claim 30, and claims 41, 42, and 48 depend from claim 40 and, thus, all dependent claims define patentable subject matter for at least those reasons that claims 26, 30, 40, and 53 are patentable and for the additional points of novelty recited in these dependent claims.

### **Conclusion**

It therefore is believed and respectfully submitted that all claims 26, 28-35, 40-42, 48, 51 and 53 remaining in the application are allowable at this time, and favorable consideration is respectfully requested.

Please charge any fees associated with this submission to Account No. 50-4417 (Rexam Plastic).

Respectfully submitted,

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